



City Council
STAFF REPORT
City of Glenwood Springs
February 18, 2016

 (date)

Agenda Item:	
Action Requested:	<p>Outdoor Seating on the public sidewalk and in public plaza areas.</p> <p><u>Direction & Discussion</u></p> <ol style="list-style-type: none"> 1. Consideration of rent reimbursement to 5 businesses affected by the Grand Avenue Bridge construction project. 2. General policy discussion regarding outdoor seating during the course of the Grand Avenue Bridge construction project.
Presented By:	Community Development Department
Background Info:	<p>In 2014 Council approved an outdoor seating leasing policy that established regulations for restaurants to use public sidewalks and plazas in the downtown area. To date the City has 11 leases with downtown eating establishments, all of which are located on 7th Street and in the pedestrian mall adjacent to the Grand Avenue Bridge.</p> <p><u>Issue #1: Consideration of Rent Reimbursement</u></p> <p>As Council is aware, the Colorado Department of Transportation (CDOT) has commenced its Grand Avenue Bridge replacement project. At the end of this month, CDOT's contractor will be working in the pedestrian mall which means that the businesses in the mall will have to remove all of their furnishings and other items from the public right-of-way.</p> <p>According to CDOT, this phase of the bridge project calls for the pedestrian mall to be under construction from March 1 through Memorial Day. The mall should be open during the summer but may close again after Labor Day. It is important to understand that these timeframes are just estimates and are subject to change.</p> <p>At CDOT's request, City staff gave notice to the following 6 businesses to remove tables, chairs and railings from the pedestrian mall on or before February 23:</p> <ul style="list-style-type: none"> • Daily Bread • Sacred Grounds • Grand Ave Sweets • Smoke • Lost Cajun • Grind <p>Per Section 6 of the outdoor seating lease agreement: "[City] agrees to prorate rent due in the event that it undertakes major structural changes that continue for a period in excess of fourteen (14) consecutive days during a lease period." Attached for your review is a copy of the standard lease agreement.</p>

The pedestrian mall will be under construction and unavailable for outdoor seating for approximately 98 consecutive days (February 23 – May 30th).

Below is a list of the approximate amount of pro-rated reimbursement to each affected lessee.

Lessee	Lease Term	Lease Sq Ft	Lease Rate	Daily Lease Rate	Days to Expiration	Est. Reimbursement
Daily Bread	5/28/15-5/28/16 367 days	192	\$1.75/sf	\$0.92	96	\$88.32
Sacred Grounds	8/14/15-8/14/16 367 days	412.5	\$1.75/sf	\$1.97	174	\$342.78
Grand Ave Sweets	5/8/15-5/8/16 367 days	180	\$1.75/sf	\$0.86	76	\$65.36
Smoke	8/26/15-9/1/16 373 days	225**	\$1.75/sf	\$1.06	192	\$203.52
Lost Cajun	5/21/15-5/21/16 367 days	250	\$1.75/sf	\$1.40	89	\$124.60
Grind	5/8/15-3/4/16 302 days	420	\$1.75/sf	\$2.43	11	\$0

** Smoke also leases 443 square feet in the adjacent east/west alley. This closure is not expected to impact the alley. The square footage and daily rate noted above reflects only the space in the pedestrian mall.

Community Development staff recommends that Council direct the Finance Department to reimburse the pro-rated rent to five of the six affected businesses noted above. Since Grind's lease expires March 4th, 11 days following notice to remove all furnishings, technically, per the lease agreement, it is not entitled to a pro-rated reimbursement. However, should Council decide to reimburse the rent, it would amount to just \$26.73.

Issue #2: General Outdoor Seating Policy Discussion

Currently any restaurant that desires to use the public right-of-way for outdoor seating is first required to submit an application to the Community Development Department along with a \$50 application fee. If the outdoor seating plan adheres to the seating policy requirements and the business owner provides proof of liability insurance and signs an indemnification agreement, the City will execute a 12-month lease. (Note that some lease terms expire with the date of liquor license renewal). As indicated above, the current lease fee is \$1.75 per square foot.

The bridge reconstruction project already has, and will continue to disrupt the normal operations of downtown businesses. Over the next two years, periodically CDOT will be closing sections of sidewalk to detour pedestrians around construction zones.

Because we cannot anticipate what will be closed from week-to-week or month-to-

	<p>month during the course of the bridge project, City staff recommends that Council temporarily waive the \$1.75 per square foot lease fee for all new and renewing outdoor seating lessees. Staff also recommends that Council temporarily waive the \$50 application processing fee.</p> <p>To be clear however, staff is <u>not</u> suggesting that Council waive the entire application process. Any restaurant owner that wishes to use the public right-of-way for seating still will be required to complete an application for city staff review and comment. If approved, the restaurant owner will execute a lease, show proof of liability insurance, and sign an indemnification agreement, per the current process.</p> <p>For Council’s general information, in addition to the lessees listed above, the City holds leases with the following eating establishments, all of which are located along 7th Street.</p> <table><tr><th>Lessee</th><th>Lease Term</th><th>Lease Sq Ft</th><th>Annual Rent</th></tr><tr><td>Riviera</td><td>4/15/15 - 4/15/16</td><td>284.16</td><td>\$497.29</td></tr><tr><td>Juicy Lucy's</td><td>9/8/15 - 9/8/16</td><td>360</td><td>\$630.00</td></tr><tr><td>Pullman</td><td>10/20/14 - 10/20/15</td><td>411.325</td><td>\$719.82</td></tr><tr><td>River Blend Coffee House</td><td>4/16/15 - 4/16/16</td><td>242.65</td><td>\$424.63</td></tr><tr><td>Brewpub</td><td>3/4/15 - 3/4/16</td><td>482.67</td><td>\$844.67</td></tr></table>	Lessee	Lease Term	Lease Sq Ft	Annual Rent	Riviera	4/15/15 - 4/15/16	284.16	\$497.29	Juicy Lucy's	9/8/15 - 9/8/16	360	\$630.00	Pullman	10/20/14 - 10/20/15	411.325	\$719.82	River Blend Coffee House	4/16/15 - 4/16/16	242.65	\$424.63	Brewpub	3/4/15 - 3/4/16	482.67	\$844.67
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Action Alternatives & Staff Recommendation:	<p>Staff recommends that Council:</p> <ol style="list-style-type: none">Direct the Finance Department to reimburse the following businesses* per section 6.0 of the standard outdoor seating lease agreement:<table><tr><td>Daily Bread</td><td>\$88.32</td></tr><tr><td>Sacred Grounds</td><td>\$342.78</td></tr><tr><td>Grand Ave</td><td>\$65.36</td></tr><tr><td>Sweets</td><td></td></tr><tr><td>Smoke</td><td>\$203.52</td></tr><tr><td>Lost Cajun</td><td>\$124.60</td></tr></table> <p>At Council’s option, direct the Finance Department to reimburse \$26.73 to the Grind.</p> <p>*Note: the reimbursement amount listed above is an approximation based on the daily rental rate and the number of days remaining before each lease expires. The Finance Department shall determine the exact amount of reimbursement due to each affected business listed above.</p> <ol style="list-style-type: none">Direct staff to temporarily suspend collection of the \$50 annual administration and the \$1.75/square foot fee for all new and renewing outdoor seating lessees, for two years or the duration of the Grand Avenue Bridge project.	Daily Bread	\$88.32	Sacred Grounds	\$342.78	Grand Ave	\$65.36	Sweets		Smoke	\$203.52	Lost Cajun	\$124.60												
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AGREEMENT FOR LEASE OF PROPERTY

This AGREEMENT FOR LEASE OF PROPERTY (the "Agreement") is made this _____ day of _____, 2014, between the CITY OF GLENWOOD SPRINGS, a Colorado home rule city ("Lessor"), and _____ ("Lessee").

WITNESSETH:

WHEREAS, Lessee desires to lease Lessor's property located at _____ in Glenwood Springs, Garfield County Colorado and as described in Exhibit A attached hereto and incorporated herein ("Property"), for use as an outdoor dining area; and

WHEREAS, Lessee occupies, either through ownership or lease, and runs an ongoing restaurant operation in property adjoining Property; and

WHEREAS, Lessee desires to lease the Property from Lessor and Lessor desires to lease the Property to Lessee on the terms and conditions contained herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Scope of Agreement. Lessee hereby agrees to utilize the Property as a temporary outdoor dining space for the service and consumption of food prepared in Lessee's adjoining restaurant operation that may or may not include the service of alcoholic beverages.

2. Consideration. Lessee agrees to annually pay Lessor _____ Dollars (\$_____) equal to the total of \$75 administration fee plus _____ square feet times \$1.75, due and payable on or before the effective date of this Agreement.

3. System Improvement Fee. Lessee agrees to pay a system improvement fee calculated in accordance with Article 080.060 of the Glenwood Springs Municipal Code. The fee shall be calculated on an EQR level as of _____ and shall be based upon the 2014 actual increase in metered water consumption compared to the historic water use (presumed to be five years). The fee shall be paid on or before _____.

4. Term. The initial term of this Agreement shall be effective as of _____, 2014 and shall be for the term of _____. As determined in the exercise of Lessor's sole discretion, Lessor may approve in writing successive _____ terms, subject to Lessee satisfying the following conditions precedent: (a) Lessee's use of Property has not been the subject of any violation of the Glenwood Springs Municipal Code, the State of Colorado Liquor and Beer Codes and Regulations, the Glenwood Springs Outdoor Dining Program and administrative permit, and this Agreement and (b), if applicable, the liquor license issued to

Lessee is renewed for the successive term. Notwithstanding anything to the contrary contained herein, this Agreement will automatically terminate if the term of this Agreement is not extended.

5. Improvements and Personal Property. All construction, improvements, installations, furniture, fixtures and/or equipment on the Property shall, at all times, comply with the Glenwood Springs Municipal Code (not limited to, but including all building and fire codes as adopted into Title 060), the Glenwood Springs Outdoor Seating Program, and the following:

5.1 Lessee accepts the Property as it is currently improved, and Lessor shall not be required to make any improvements thereon. Lessee, at its sole expense, shall erect, retain and maintain a perimeter enclosure not more than forty-two inches (42") in height and not less than thirty-six inches (36") in height. The perimeter enclosure material, design, and installation shall be approved by Lessor. The perimeter enclosure shall also be located to facilitate monitoring of potential encroachments beyond the Property. The perimeter enclosure must be approved by Lessor for egress purposes. Openings in the enclosure shall not be less than thirty-six inches (36") wide. Unless otherwise required, if there is a gate it must swing inward to prevent obstruction of the public right-of-way. The perimeter enclosure shall not be affixed to the public right-of-way or in any way damage the existing surface of the Property or surrounding area, unless approved in writing by the Public Works Department.

5.2 Lessee may place furniture, fixtures and equipment on the Property so long as the same do not endanger any passersby or patrons, and are secured to resist wind. No portion of Lessee's furniture, fixtures or equipment shall extend beyond the boundaries of the Property nor impede pedestrian traffic on the public right-of-way adjoining the Property. The terms of this paragraph shall include, but not be limited to, perimeter enclosures, planters, signs, tables, chairs, shade structures, umbrellas while closed or open, outdoor portable heaters and any other furniture or equipment placed or utilized by Lessee. Lessee's furniture may remain on the Property during hours not in operation at Lessee's own discretion and Lessee shall accept and retain full responsibility and liability for any damage or theft. Lessee shall not store furniture, fixtures or equipment on the Property when not being used as an outdoor dining area. Required perimeter enclosures shall be continuously maintained during the term of this Agreement.

5.3 If alcohol service is permitted on the Property, the perimeter of the Property shall be enclosed by a fixed perimeter enclosure no less than ____inches (____") in height, the material, design and installation of which shall be approved by Lessor and the Glenwood Springs Local Liquor Licensing Authority. Signs notifying customers of entrance into or exit from the limits of the liquor licensed premises shall be posted on Property as required by the State of Colorado Liquor and Beer Codes and Regulations and/or the Local Liquor Licensing Authority.

5.4 All lighting shall comply with Article 070.140 of the Glenwood Springs Municipal Code. Under no circumstances shall electrical wires, extension cords or similar wiring, cables or conduit extend beyond the Property into the public way, nor cross pedestrian paths, nor be placed so as to create a tripping hazard.

5.5 Signs are expressly prohibited on the Property except in compliance with the Glenwood Springs Municipal Code and the Outdoor Seating Policy. Lessee shall submit and obtain approval of a City sign permit before installing any signage, except that required in 5.3 above.

5.6 Lessee shall not utilize sidewalk trash and/or recycling receptacles for refuse generated within the Property. Lessee may provide a private trash and/or recycling receptacle within the Property provided that it is emptied and maintained on a regular basis. All trash and/or recycling receptacles must be emptied or pulled into an enclosed area at the close of business each day. Lessee shall at all times ensure that refuse generated within the Property does not transfer to the adjoining public right-of-way and does not attract wildlife.

5.7 Lessee understands this Property may be subject to temporary or permanent closure due to replacement of the Grand Avenue bridge which may affect this Agreement pursuant to sections 6. (temporary closure) and 9.2 (permanent closure) below.

6. Lessor's Access; Repairs. Lessor and Lessor's agents shall have the right to enter the Property at any time to inspect the same and make any necessary repairs or alterations to the sidewalks, utilities, meters or other public facilities as Lessor may deem necessary or proper for the safety, improvement, maintenance or preservation thereof. Lessee further agrees that if Lessor shall determine it necessary to make changes or improvements affecting the Property which may affect any improvements placed by Lessee, that the Lessee, by execution of this Agreement, hereby waives any and all right to make any claim for damages to the improvements and agrees to promptly remove any furniture, fixtures, equipment and structures as necessary during such necessary repair or alteration periods. Lessor agrees to prorate rent due in the event it undertakes major structural changes that continue for a period in excess of fourteen (14) consecutive days during a lease period.

7. Quiet Possession. Lessor covenants and agrees that so long as Lessee observes and performs all of the agreements and covenants required of it hereunder, Lessee shall peaceably and quietly enjoy use of the Property for the term without any encumbrance, interference or hindrance by Lessor other than as detailed in this Agreement. If Lessee's use of the Property is limited or denied through rezoning, environmental impact edict, or other action of any public or quasi-public agency or governmental authority, this Agreement, at the sole option of Lessee, shall terminate as of the effective date of such action provided that the Lessor may not use this process to solely terminate this Agreement.

8. Indemnity; Insurance; Governmental Immunity.

8.1 Indemnity. The Lessee shall be responsible for all damages to persons or property caused by the Lessee, its agents, employees or subcontractors, which may result from its negligent acts, errors and omissions hereunder, and to the extent permitted by law shall indemnify and hold harmless Lessor from any claims or actions brought against Lessee or Lessor by reason thereof.

8.2 Insurance. Lessee shall provide proof of general liability insurance to the Lessor upon execution of this Agreement. The liability insurance shall name the Lessor as an "additional insured" thereunder, with appropriate endorsements and with single limit liability coverage of at least One Million Dollars (\$1,000,000.00). Lessee shall maintain this insurance for the term of this Agreement.

8.3 Governmental Immunity. Nothing in this Agreement shall be interpreted as a waiver of governmental immunity, to which Lessor would otherwise be entitled under Section 24-10-101, C.R.S., et seq., as amended.

9. Termination.

9.1 With Notice. This Agreement may be terminated for any reason whatsoever, at Lessor's sole discretion, upon ninety (90) days written notice.

9.2 Immediate. In the event Lessor determines that continued use of the Property poses an undue threat to the public health and welfare or other cause exists, this Agreement may be immediately terminated.

10. Removal of Lessee Improvements and Personal Property. Lessee shall promptly, but in no event more than 10 days after termination, expiration or non-renewal of this Agreement, remove all personal property, including but not limited to improvements, enclosures, furniture, fixtures, equipment or structures installed by it or at its direction on the Property and restore Property to its condition before Lessee's use under this Agreement. Failure to remove said Lessee property within ten (10) days shall be deemed abandonment of said Lessee property and result in the ownership thereof transferring to Lessor which shall have the right to dispose of said property as its own. If Lessee fails to remove Lessee property and restore Property to its pre-existing condition, Lessee shall reimburse Lessor for all costs associated with its failure to restore Property.

11. Default; Breach; Remedies.

11.1 Default. The occurrence of any of the following events constitutes cause to terminate this Agreement:

(a) The failure by Lessee to maintain insurance.

(b) The revocation or suspension of Lessee's liquor license or other operating permits or licenses.

(c) The making by Lessee of any general assignment or general arrangement for the benefit of creditors; the filing by Lessee of a petition to have Lessee adjudged a bankrupt, or the judicial declaration of Lessee as bankrupt.

(d) The appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Property or Lessee's adjoining business or of Lessee's interest in this Agreement, if possession is not restored to Lessee within thirty (30) days.

(e) The attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Property or Lessee's adjoin business or of Lessee's interest in this Agreement, if the seizure is not discharged within thirty (30) days.

(f) If Lessee vacates or abandons the Property for a period of _____ or more.

(g) The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by Lessee, other than those described in subparagraph (a) through (f) above, where the failure continues for a period of thirty (30) days after Lessee receives notice thereof from Lessor; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within the thirty (30) day period and thereafter diligently completes the cure.

11.2 Remedies upon Lessee's Default. In the event of any such Default by Lessee, Lessor may, after giving notice as provided above, terminate this Agreement and require Lessee to remove the improvements as discussed herein. Lessor may enter onto the Property, remove Lessee's property, take and hold possession of Lessee's property, and expel Lessee and pursue those remedies available to Lessor under the laws of the State of Colorado.

11.3 Default by Lessor. Lessor shall not be in default unless Lessor fails to perform any covenants, terms, provisions, agreements or obligations required of it within a reasonable time, but in no event later than thirty (30) days after notice by Lessee to Lessor; provided that if the nature of Lessor's obligation is such that more than thirty (30) days are reasonably required for performance, then Lessor shall not be in default if Lessor commences performance within the thirty (30) day period and thereafter diligently completes performance.

11.4 Remedies upon Lessor's Default. If Lessor defaults in the performance of any of the obligations or conditions required to be performed by Lessor under this Agreement, Lessee may elect to terminate this Agreement upon giving thirty (30) days' notice to Lessor of its intention to do so, with return of prorated annual rent payment.

12. Agreement Administration and Notice. For purposes of administering this Agreement, _____ will represent the City in carrying out the purposes and intent of this Agreement. Any notices required to be given pursuant to this Agreement shall be delivered as follows:

To the Lessor: City Manager
 City of Glenwood Springs
 101 West 8th Street
 Glenwood Springs, Colorado 81601

Copy to: City Attorney
 City of Glenwood Springs
 101 West 8th Street
 Glenwood Springs, Colorado 81601

To the Lessee:

Copy to:

13. Entire Agreement. This Agreement constitutes the entire agreement between the parties. The parties shall not be bound by any other agreements, either written or oral, except as set forth in this Agreement.

14. Governing Law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this agreement. Venue for any action instituted pursuant to this agreement shall lie in Garfield County, Colorado.

15. Authority. Each person signing this agreement represents and warrants that said person is fully authorized to enter into and execute this agreement and to bind the party it represents to the terms and conditions hereof.

16. Attorneys' Fees. Should this Agreement become the subject of litigation between Lessor and Lessee, the prevailing party shall be entitled to recovery of all actual costs in connection therewith, including but not limited to reasonable attorneys' fees and expert witness

fees. All rights concerning remedies and/or attorneys' fees shall survive any termination of this Agreement.

17. Assignment. Lessee may not assign this Agreement without written Lessor approval.

18. Counterparts. This Agreement may be executed in counterparts, including any facsimile copies, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands this _____ day of _____, 2014.

LESSOR – CITY OF GLENWOOD SPRINGS

ATTEST:

By: _____
Jeff Hecksel, City Manager

Robin S. Unsworth, City Clerk

APPROVED AS TO FORM:

By: _____
Janette H. Shute, City Attorney

LESSEE – _____

By: _____
Name: _____
Title: _____